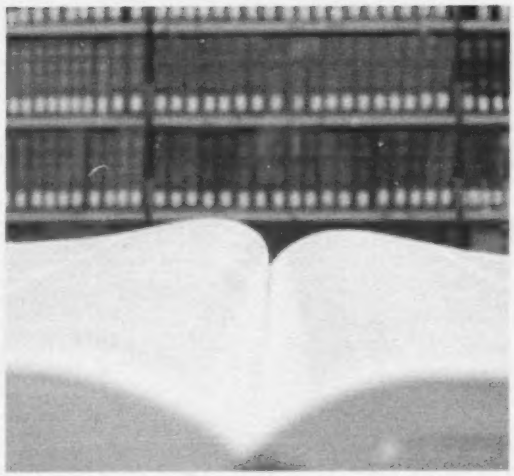
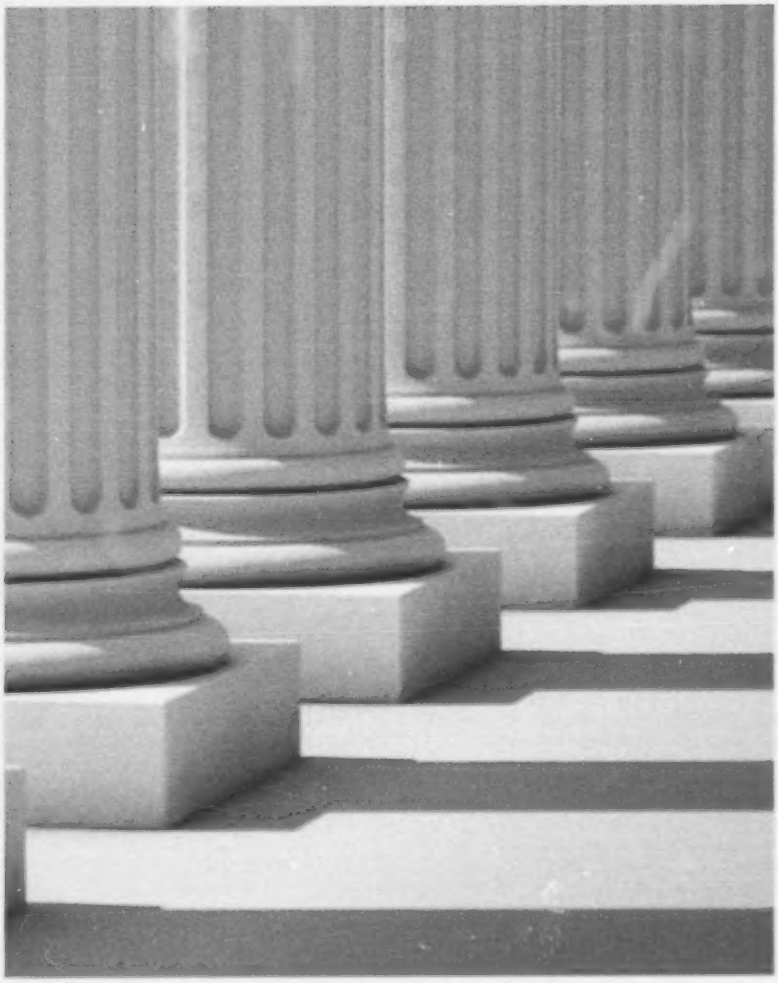


ALBERTA LAW REFORM INSTITUTE ANNUAL REPORT 2014 2015



ALBERTA
LAW REFORM
INSTITUTE

FROM THE CHAIRMAN

James S Peacock QC, Chairman

The Alberta Law Reform Institute (ALRI) was founded in November of 1967 by an agreement among the Province of Alberta, the Law Society of Alberta, and the University of Alberta. Each determined that it was in the public interest that there be a permanent law reform body, and each agreed that there was individual benefit to the parties from their participation in the formation of a law reform agency. The Institute has been renewed by successive five-year agreements since then. The current agreement was signed in April 2012. The University of Calgary has been represented on the ALRI Board since 1977 and there are currently two ALRI counsel located in the Institute's office in the Faculty of Law at the University of Calgary.

The certainty of funding from the Province of Alberta remains a challenge for the Institute. However, despite the challenges of resource constraints, I remain confident that ALRI will continue to fulfill its mandate and thereby continue to make a significant contribution to improving the law and to the administration of justice for all Albertans.

I have had the pleasure of serving as the Chair of the Board for the last 5 years and of serving as a member of the Board since 2006. I have now reached the maximum term for Board service. My experience with ALRI has only served to increase my admiration for all of those actively involved in law reform and, in particular, for the dedicated ALRI counsel and staff. I would be remiss if I did not acknowledge the tremendous leadership of ALRI's long serving Director, Peter Lown. Through his many contributions over the years, Peter has enhanced the reputation of ALRI and earned the respect of other law reform agencies in Canada and abroad. Finally, a word of thanks to the members of the ALRI Board who, through their commitment of time, thoughtful analysis and discussion, make a significant contribution to ALRI's work and, in so doing, to the public interest.

FROM THE DIRECTOR

Peter JM Lown QC, Director

The Alberta Law Reform Institute has completed 48 years of contribution to the law and administration of justice in Alberta.

When ALRI was first formed it was a unique arrangement for a law reform agency. Blending the commitments of the Government of Alberta and the Law Society with a commitment to research excellence through the University of Alberta was seen as the best way of giving law reform the prominence that the task demanded. Over the years, the rate of implementation of proposals is a tribute to the foresight and attention of the founders. Law reform is a public and interactive process and ALRI would not have been so productive without the significant contributions of a host of volunteers who give their time to consultations and project work. I express my personal gratitude for all these contributions.

An integral part of our communications is our website. There you can find updated information on our projects, personnel and implementation of our reports.

Since January 1, 2015, our reports are distributed electronically. All our reports, including past reports published in hard copy, are available for download on our site.

I will be retiring from the Institute on December 31, 2015 so this will be my last Annual Report. I can truly say that it has been an honour and a privilege to serve the Institute, and to have been associated with the Board and staff. I have served with three Chairs, the late Alan D. Hunter, Neil C. Wittmann CJQB, and James Peacock QC., each of whom, in different ways, has brought wisdom, leadership, and dedication to ALRI. It has been a pleasure to be associated with and to work with each of them.

BOARD AND STAFF

Board Members

James S Peacock QC, Chairman	Partner, Gowling Lafleur Henderson LLP, Calgary
Professor Nigel D Bankes	Faculty of Law, University of Calgary
Professor Philip L Bryden	Faculty of Law, University of Alberta
Anne S de Villars QC	Partner, de Villars Jones, Edmonton *(until February 2015)*
Mona T Duckett QC	Partner, Dawson, Duckett, Shaigec & Garcia, Edmonton
James T Eamon QC	Partner, Gowling Lafleur Henderson LLP, Calgary
The Honourable Judge Charles D Gardner	Assistant Chief Judge, Provincial Court of Alberta
The Honourable Justice Karen M Horner	Court of Queen's Bench of Alberta *(from September 2014)*
Dr William H Hurlburt LLD QC	Director Emeritus, Alberta Law Reform Institute
Anne L Kirker QC	Partner, Norton Rose Fulbright Canada LLP, Calgary
Peter JM Lown QC	Director, Alberta Law Reform Institute
The Honourable Justice Alan D Macleod	Court of Queen's Bench of Alberta *(until September 2014)*
Dean Paul D Paton	Faculty of Law, University of Alberta *(from September 2014)*
Karen A Platten QC	Partner, McLennan Ross LLP, Edmonton *(from January 2015)*
Nolan D Steed QC	Executive Director, Legal Policy, Alberta Justice

Staff

Peter JM Lown QC	Director
Laura Buckingham	Counsel
Carol Burgess	Operations Manager
Barry Chung	Communications Assistant
Debra Hathaway	Counsel
Ilze Hobin	Administrative Assistant
Cheryl Hunter Loewen	Counsel
Jenny Koziar	Assistant to the Director
Katherine MacKenzie	Legal Research Associate
Robyn Mitchell	Counsel
Sandra Petersson	Counsel and Research Manager
Geneviève Tremblay-McCaig	Counsel

BOARD AND STAFF

The finished product of law reform owes a lot to the experience and analytical ability of a variety of parties. ALRI has been fortunate in both the quality and dedication of its Board members. By agreement of the founding parties, the Board consists of:

- One elected Bencher, appointed by the Benchers of the Law Society of Alberta (James Eamon QC);
- The Provost of the University of Alberta or the Provost's designate and one person appointed by the Faculty of Law of the University of Alberta (until September 2014, Dean Bryden occupied both positions; after September, Dean Paton is the Provost's representative and Prof. Bryden represents the Faculty);
- One person appointed by the Faculty of Law of the University of Calgary (Professor Nigel Bankes);
- Appointed by the Minister of Justice (Nolan Steed QC, and William Hurlburt QC);
- ALRI's Director (Peter Lown QC).

In addition, there are four to seven members-at-large appointed after an open and transparent recruitment process (James Peacock QC, Mona Duckett QC, Honourable Judge Charles Gardner, Honourable Justice Karen Horner, Anne Kirker QC, and Karen Platten QC are the current members-at large).

The last Continuation Agreement introduced the concept of maximum terms – set at three, three-year terms. This had the effect of "timing out" some Board members who have made a significant contribution to ALRI. Anne de Villars served the maximum number of terms and made a significant contribution to our work in Wills and Succession. Justice Alan Macleod served first as the Law Society representative and then as member-at-large and continued even after his appointment to the Court of Queen's Bench. Chairpersons are not exempt fromthis agreement and we reluctantly bid adieu to Jim Peacock, Q.C. in the Spring of 2015.

BOARD AND STAFF

Unexpected circumstances also lead to Ritu Khullar having to cut short her service. We hope that she will be able to return to the Board in the future.

We were happy to add during the year, two new members. Justice Karen Horner joined us in September 2014. (She is the first sitting judge to be appointed to the ALRI Board.) Karen Platten, QC from the firm of McLennan Ross LLP joined the Board in January 2015.

ALRI is also very fortunate to have an excellent legal staff. Collectively, our legal staff has more than 50 years of active experience in law reform. A variety of postgraduate qualifications in law, legal drafting, negotiation and business complement the strong legal skills that they bring to each project.

Even in a small staff, some churn is common and the funding pressures we have been under are a contributing factor. So too is the fact that ALRI Counsel have special skills that are attractive

BOARD AND STAFF

to other employers. This year we said goodbye to Shannon Brochu (April 2014), Maria Lavelle (May 2014) and Cheryl Hunter Loewen (August 2014) as they moved on to personal interests, a government regulator and private industry, respectively.

We were fortunate to choose from a talented group of applicants. Katherine MacKenzie (September 2014), Laura Buckingham (January 2015) and Robyn Mitchell (January 2015) all joined us from private practice.

The work of the Board and ALRI's legal staff would not be possible without the tremendous support of our administrative staff. ALRI is fortunate to have a strong administrative team that seamlessly looks after the daily logistics of running a research and policy unit and a publishing branch.

It has been ALRI's practice to employ summer research students and it has been noteworthy to observe their subsequent careers, including service as Board members. Kathryn Griffin in Edmonton and Justine Johnson in Calgary were our 2014 students. Kathryn was able to continue to assist part-time through until March 2015.

We also appreciate the ongoing support of the University of Alberta and the University of Calgary. Both Universities provide office space for ALRI's operations. The University of Alberta also provides funding and very significant and valuable administrative services.

ACTIVITIES

ALRI values its relationship with the bar and bench and relies on the profession as an essential source of feedback on law reform proposals.

ALRI values its relationship with the bar and bench and relies on the profession as an essential source of feedback on law reform proposals. A full understanding of any area of law under review must include input on how the law works in practice.

In the past few years, ALRI has expanded its consultation process. Through electronic surveys we are able to reach a broader range of lawyers. In the past, ALRI has relied on an extensive hard copy mailing list; once a consultation document arrived at a law firm, it may not have found its way into the hands of the experts we need to hear from. With the kind support of the Law Society of Alberta and the Canadian Bar Association we have been able to connect with a broader range of lawyers regarding our projects and consultation opportunities. Electronic surveys also make it easier for us to reach members of the public.

We regularly present to CBA sections on specific projects and to the broader legal community through regional bar associations. Government departments that may be impacted by our recommendations seek our input and explanation, and the media have called upon us for appearances. Our work in Estate Administration, Family Law and Non-Profits has covered the spectrum of this outreach.

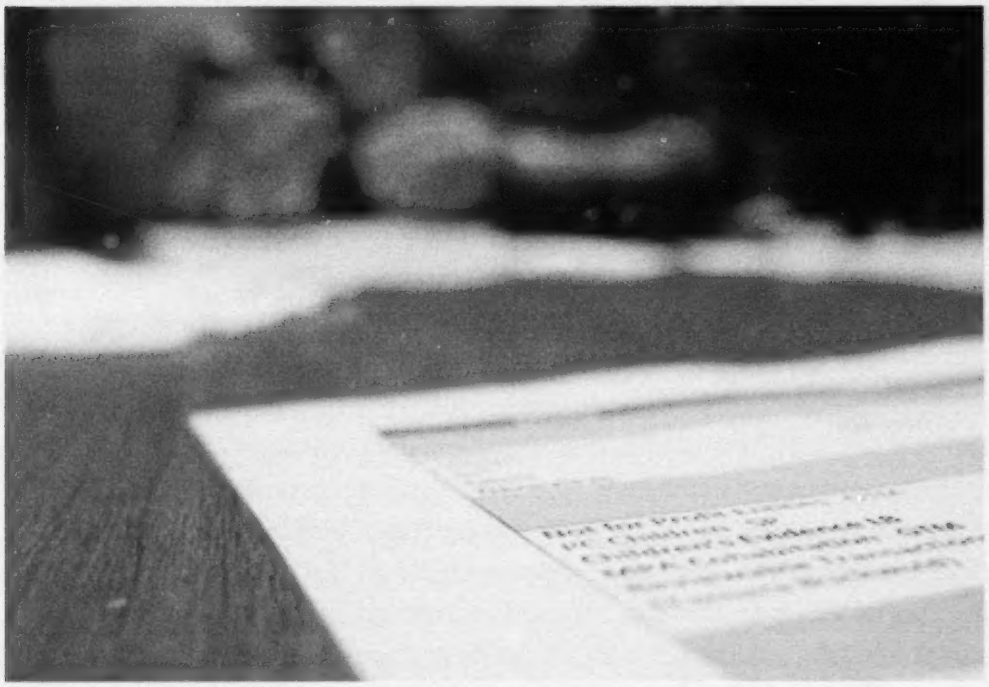
Our relationship with the Uniform Law Conference of Canada (ULCC) contributes to both the Provincial and National law reform program. The Director chairs the Advisory Committee on Program Development and Management and the International Committee, and co-chaired a joint project on Recognition of Substitute Decision-Making Documents (Powers of Attorney and Health Care Directives) with the United States Uniform Law Commission.

ACTIVITIES

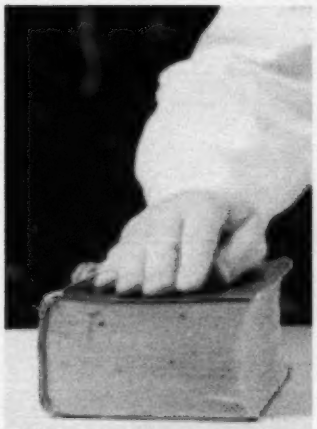
We maintain contact with other law reform agencies through the Federation of Law Reform Agencies of Canada. Our Research Manager now serves as President and our Operations Manager as Treasurer.

January 1, 2015 also marked a major step in our publication policy. Previously consultation documents were e-published, but as of January 1, all documents are e-published and no hard copies are distributed.

All documents are downloadable and searchable on our website. Not only does this represent a labour and cost saving, but it puts material in the hands of users quickly and conveniently. Our distribution process was refined in anticipation of this change and the list of recipients continues to grow.



RECENT PUBLICATIONS

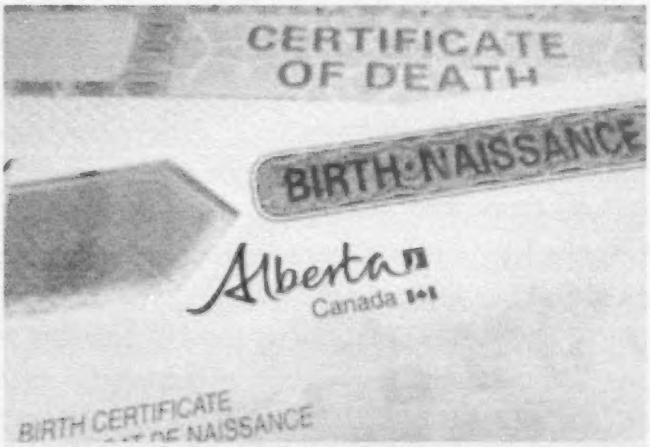


Final Report 105
Oaths And Affirmations
July 2014

Final Report 104
Beneficiary Designations by Substitute Decision Makers
March 2014

Report For Discussion 25
Matrimonial Property: Valuation Date
November 2014

Report For Discussion 26
Non-Profit Corporations
February 2015



Final Report 106
Assisted Reproduction after Death: Parentage And Implications
March 2015

THANK YOU FOR YOUR SUPPORT

The work of law reform would not be possible without the ongoing financial support of our key funders:

The Alberta Law Foundation

Alberta Justice and Solicitor General

The University of Alberta

Support in kind is also provided by:

The University of Alberta

The University of Calgary

Gowling Lafleur Henderson LLP

Norton Rose Fulbright Canada LLP

The following organizations facilitated consultations carried out by ALRI:

The Law Society of Alberta

The Canadian Bar Association, Alberta Branch

Alberta Justice and Solicitor General

Borden Ladner Gervais

In addition to those who provided oral or written feedback on our projects, ALRI would like to thank the following individuals who volunteered their time in connection with ALRI projects.

John C. Armstrong, QC

Peter Broder

Professor Tamara Buckwold

C. Yvonne Chenier, QC

Laird Hunter, QC

The Honourable Justice Craig M. Jones

Donna Molzan, QC

Dennis J. Pelkie, QC

Karen A. Platten QC

Philip J. Renaud, QC

Ruth Spetz

FUTURE PLANNING

In our project selection process there is a multi-level review of the topic suggestions. A preliminary assessment may be followed by a project plan and then finally by the project itself. The following topics are at the stages set out:

Ongoing/current projects:

Matrimonial Property: Valuation Date
Non-Profits
Reviewable Transactions
Cohabitants – Property Division
Rule Against Perpetuities
Trustee Act
Children's Evidence

Preliminary Assessments to be done as time permits:

Informal Public Appeals
International Commercial Arbitration
Travel Insurance
Limitations Act Review
Substitute Decision-Making
Final Reports to be published in 2015:
Matrimonial Property Act: Valuation Date
Reviewable Transactions
Trustee Act

ALRI has also set out a multi-year business plan. A key goal in that business plan is to determine how ALRI should operate and position itself in an electronic environment. As part of that process, we also aim to continue to promote ALRI's website as an important component of legal information and research. This Annual Report spans April 2014 to March 2015.

Your Views

All of our reports are freely available electronically on our website. A limited number of hard copies are available on request.

We encourage you to contact us. The Your Views section on our website was designed to let you choose to be added to our electronic mailing list or provide comments on the current projects we are working on. You can also use this option to suggest an area for review that we are not currently addressing.

You can also follow us on Twitter at @ablawreform for the latest on our projects and developments in Alberta Law.

402 Law Centre
University of Alberta
Edmonton, AB T6G 2H5

Phone: 780-492-5291
Fax: 780-492-1790
E-mail: lawreform@ualberta.ca

www.alri.ualberta.ca **@ablawreform**